



DEPARTMENT OF THE NAVY

OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

SECNAVINST 5820.7C
N3/N5
26 January 2006

SECNAV INSTRUCTION 5820.7C

From: Secretary of the Navy

Subj: COOPERATION WITH CIVILIAN LAW ENFORCEMENT OFFICIALS

Ref: (a) DoD Directive 5525.5 of 15 Jan 86
(b) DoD Directive 3025.12 of 4 Feb 94
(c) Title 10, U.S. Code, Sections 371-382
(d) SECNAVINST 5211.5D
(e) DoD 4515.13-R, Air Transportation Eligibility, of Nov 94
(f) SECNAVINST 5430.107
(g) SECNAVINST 3820.3E
(h) Title 18, U.S. Code, Section 1385
(i) CJCSI 3121.01B

1. Purpose. This instruction implements reference (a) and Department of the Navy (DON) policy, responsibilities, and procedures for the transfer of relevant information, and the provision of equipment, facilities and personnel to Federal, State, and local civilian law enforcement officials. This instruction has been administratively revised and should be reviewed in its entirety.

2. Cancellation. SECNAVINST 5820.7B.

3. Scope. This instruction applies to all DON commands and activities. This instruction does not apply to cooperation with foreign officials (which follows the guidance of applicable international agreements and the administrative and operational chain of command). Use of DON personnel in civil disturbances and related matters is addressed by reference (b). Assistance to the government of the District of Columbia is addressed by separate Department of Defense (DoD) guidance.

4. Policy. It is DON policy to cooperate with civilian law enforcement officials (employees with the responsibility for enforcement of the laws within the jurisdiction of U.S. Federal, State, or local governmental agency) to the extent practical. The implementation of this policy shall be consistent with the needs of national security and military preparedness, the historic tradition of limiting direct military involvement in

civilian law enforcement activities, and applicable law. Assistance provided under this instruction shall be at the lowest cost practicable. Assistance may not be provided under this instruction if such assistance could adversely affect national security or military preparedness.

5. Procedures for Prompt Transfer of Relevant Information

a. In accordance with reference (c), DON commands and activities are encouraged to provide Federal, State, or local civilian law enforcement officials any information collected during the normal course of military operations that may be relevant to a violation of any Federal or State law within the jurisdiction of such officials. In the event that a system of records maintained by DON to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature arising by general statute (or by rule, regulation, or order issued pursuant to the statute), the relevant records in the system of records may be referred, as a routine use under reference (d), to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute (or rule, regulation, or order issued pursuant to it). An exception may be made when information is acquired and disseminated to a civilian agency through separate channels established and approved by the Chief of Naval Operations, the Commandant of the Marine Corps, Director, Naval Criminal Investigative Service, or higher authority.

b. The planning, scheduling, and execution of compatible military training or operations may take into account the needs of civilian law enforcement officials when the collection of information is an incidental aspect of training performed for a military purpose. This does not permit the planning, scheduling or execution of military training or operations for the primary purpose of aiding civilian law enforcement officials, or the purpose of routinely collecting information about U.S. citizens. Local law enforcement agents may accompany routinely scheduled training flights as observers for the purpose of collecting law enforcement information. This provision does not authorize the use of DoD aircraft to provide point-to-point transportation and training flights for civilian law enforcement officials (which may be provided only in accordance with reference (e)).

c. The transfer of such information shall be in accordance with reference (f) (providing Naval Criminal Investigative

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Service exclusive authority for some matters, and primary authority for other matters). Naval commands are authorized to established local contact points with civilian agencies in routine law enforcement matters; commands shall coordinate with the local Naval Criminal Investigative Service Office for other matters.

d. Nothing in this section modifies DON policies or procedures concerning collection or dissemination of information for intelligence purposes under reference (g).

6. Procedures for Request for Equipment, Facilities, Personnel

a. All requests from civilian law enforcement officials for the use of DON equipment, facilities, or personnel under this instruction will be submitted by the requested command via the chain of command to the designated approval authority (unless approval by higher authority is required by statute or DoD guidance). On Marine Corps installations with Provost Marshals, requests shall be coordinated with the Provost Marshal. Requests requiring DoD approval must be forwarded with a recommendation and justification to approve or deny the request. Requests may be communicated by telephone when time and circumstances require immediate action. When forwarding a request, the command will provide all available relevant information concerning:

(1) The ability to provide the assistance requested without adversely affecting national security or military preparedness, and

(2) The incremental costs DON would incur in providing the requested assistance.

b. Approval Authority for Use of Equipment and Facilities:

(1) Requests for the loan or use of equipment or facilities for more than 60 days (including a permanent disposition) or for arms, ammunition, combat vehicles, vessels, and aircraft must be approved by the Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN (M&RA)).

(2) All other requests may be approved by any of the following commands (or superiors to these commands): Naval Component and Fleet Commanders; Commanders and Commanding Officers of major Navy shore commands; Commanding Generals of Marine Corps operating forces; Commanders of Marine Corps bases, camps, aviation installations, logistics installations, and unit

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training centers; Commanding Generals of Marine Corps Reserve support activities.

c. Approval Authority for Use of Personnel:

(1) The Secretary of Defense, via the Joint Staff (and Assistant Secretary of Defense (Reserve Affairs) for requests involving reserve personnel), is the approval authority for personnel requests that involve assignment of 50 or more DON personnel, or a period of assignment of more than 30 days, or DON intelligence components.

(2) The ASN (M&RA) may approve requests for the following use of DON personnel, except as provided above, in accordance with reference (a):

(a) To provide training or expert advice;

(b) For equipment maintenance;

(c) To monitor and communicate the movement of air and sea traffic;

(3) The Under Secretary of Defense for Personnel and Readiness, via the Joint Staff (and ASD(RA)) for requests involving reserve personnel) is the approval authority for other requests that involve the assignment of personnel.

d. Delegated Denial Authority: Requests for assistance from civilian law enforcement officials that may be approved at the Secretary of the Navy level or below may be denied by the appropriate Echelon 2 command if appropriate under this instruction.

7. Permissible Forms of Equipment and Facilities Assistance

a. DON activities may make equipment and facilities (base and research) available to Federal, State, or local civilian law enforcement officials for law enforcement purposes when approved as above.

b. Approval authorities shall ensure that assistance provided under this paragraph follows applicable provisions of Title 10, U.S. Code, Sections 372, 2576, 2667, Title 31, U.S. Code, Sections 1535-1536, and other applicable laws and directives (see reference (a)).

8. Permissible and Impermissible Forms of Personnel Assistance

a. DoD policy (reference (a), making the Posse Comitatus Act applicable to the DON) reflects the historic tradition of limiting direct military involvement in civilian law enforcement activities. The Posse Comitatus Act (reference (h)) states:

"Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both."

Pursuant to reference (a), commands must adhere to this paragraph in deciding on the provision of military personnel to civilian law enforcements requests.

b. Restrictions on Direct Assistance: Except as otherwise provided in this instruction, reference (a) prohibits the following forms of direct assistance by military personnel:

(1) Interdiction of a vehicle, vessel, aircraft, or other similar activity.

(2) A search or seizure.

(3) An arrest, apprehension, stop and frisk, or similar activity.

(4) Use of military personnel for surveillance or pursuit of individuals, or as undercover agents, informants, investigators, or interrogators.

(5) With regard to such actions described above that are conducted outside the territorial jurisdiction of the United States, the Secretary of Defense or the Deputy Secretary of Defense will consider for approval, on a case-by-case basis, requests for exceptions to the policy restrictions against direct assistance by military personnel to execute the laws. Such requests for exceptions to policy outside the territorial jurisdiction of the United States should be made only when there are compelling and extraordinary circumstances to justify them.

(6) Further, the Secretary of the Navy may provide exceptions to the limitations contained in this instruction on a case-by-case basis:

(a) Such exceptions shall include requests from the Attorney General for assistance under Title 21, U.S. Code, Section 873(b).

(b) Prior approval from the Secretary of Defense shall be obtained for exceptions that are likely to involve participation by members of the Navy or Marine Corps in an interdiction of a vessel or aircraft, a law enforcement search or seizure, an arrest, apprehension, or other activity that is likely to subject civilians to use of military power that is regulatory, proscriptive, or compulsory. Such approval may be granted only when the head of the civilian agency concerned verifies that:

1. The size or scope of the suspected criminal activity poses a serious threat to the interests of the United States and enforcement of a law within the jurisdiction of the civilian agency would be impaired seriously if the assistance were not provided because civilian assets are not available to perform the missions; or

2. Civilian law enforcement assets are not available to perform the mission and temporary assistance is required on an emergency basis to prevent loss of life or wanton destruction of property.

c. Permissible Direct Assistance. The following activities are permissible:

(1) Primary Purpose Military or Foreign Affairs: Actions that are taken for the primary purpose of furthering a military or foreign affairs function of the United States, regardless of incidental benefits to civilian authorities. This provision must be used with caution, and does not include actions taken for the primary purpose of aiding civilian law enforcement officials or otherwise serving as a subterfuge to avoid the restrictions of the instruction. Actions under this provision may include the following, depending on the nature of the DoD interest and the authority governing the specific action in question:

(a) Investigations and other actions related to enforcement of the Uniform Code of Military Justice (UCMJ).

(b) Investigations and other actions that are likely to result in administrative proceedings by the Department of Defense, regardless of whether there is a related civil or criminal proceeding.

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(c) Investigations and other actions related to the commander's inherent authority to maintain law and order on a military installation or facility.

(d) Protection of classified military information or equipment.

(e) Protection of DoD personnel, equipment and official guests.

(f) Such other actions that are undertaken primarily for a military or foreign affairs purpose.

(2) Department of Defense Inspector General (DoD IG): Audits and investigations conducted by, under the direction of, or at the request of the DoD Inspector General. This includes drug investigations conducted by Naval Criminal Investigative Service under DoD IG Criminal Investigations Policy Memorandum Number Five on Criminal Drug Investigative Activities of 1 October 1987.

(3) Preserve Public Order: Actions that are taken under the inherent right of the U.S. Government under the Constitution to ensure the preservation of public order and to carry out governmental operations within its territorial limits, or otherwise in accordance with applicable law, by force, if necessary. This authority is reserved for unusual circumstances, and will be used only under reference (b), which permits use of this power in two circumstances:

(a) The emergency authority authorizes prompt and vigorous Federal action, including use of military forces, to prevent loss of life or wanton destruction of property and to restore governmental functioning and public order when sudden and unexpected civil disturbances, disasters, or calamities seriously endanger life and property and disrupt normal governmental functions to such an extent that duly constituted local authorities are unable to control the situation.

(b) The emergency authority authorizes Federal action, including the use of military forces, to protect Federal property and Federal Government functions when the need for protection exists and duly constituted local authorities are unable or decline to provide adequate protection.

(4) Insurgency: Actions taken pursuant to DoD responsibilities under Title 10, U.S. Code, Sections 331-334 and

reference (b), relating to the use of the military forces with respect to insurgency or domestic violence or conspiracy that hinders the execution of State or Federal law in specified circumstances.

(5) Assistance to Executive Officials. Actions taken under express statutory authority to assist officials in executing the laws, subject to applicable limitations. The laws that permit direct military participation in civilian law enforcement, include, but are not limited to, the following:

(a) Protection of national parks and certain other Federal lands. Title 16, U.S. Code, Sections 23, 78 and 593.

(b) Enforcement of the Fishery Conservation and Management Act of 1976. Title 16, U.S. Code, Section 1861(a).

(c) Assistance in the case of crimes against foreign officials, official guests of the United States, and other internationally protected persons. Title 18, U.S. Code, Sections 112 and 1116.

(d) Assistance in the case of crimes against members of Congress. Title 18, U.S. Code, Section 351.

(e) Assistance in the case of crimes involving nuclear materials. Title 18, U.S. Code, Section 831.

(f) Protection of the President, Vice President, and other designated dignitaries. Title 18, U.S. Code, Section 1751 and the Presidential Protection Assistance Act of 1976.

(g) Actions taken in support of the neutrality laws. Title 22, U.S. Code, Sections 408 and 461-462.

(h) Removal of persons unlawfully present on Indian lands. Title 25, U.S. Code, Section 180.

(i) Execution of quarantine and certain health laws. 42 U.S.C. § 97.

(j) Execution of certain warrants relating to enforcement of specified civil rights laws. 42 U.S.C. § 1989.

(k) Removal of unlawful inclosures from public lands. 43 U.S.C. § 1065.

(l) Protection of the rights of a discoverer of a guano island. Title 48, U.S. Code, Section 1418.

(m) Support of territorial governors if a civil disorder occurs. Title 48, U.S. Code, Sections 1422 and 1591.

(n) Actions in support of certain customs laws. Title 50, U.S. Code, Section 220.

(6) Expert Advice. DON activities may provide expert advice to Federal, State, or local law enforcement officials in accordance with Title 10, U.S. Code, Section 373. This does not permit regular or direct involvement of military personnel in activities that are fundamentally civilian law enforcement operations, except as otherwise authorized in this instruction.

(7) Training. DON activities may provide training to Federal, State, and local civilian law enforcement officials in the operation and maintenance of equipment made available under this instruction. This does not permit large scale or elaborate training, and does not permit regular or direct involvement of military personnel in activities that are fundamentally civilian law enforcement operations, except as otherwise authorized by this instruction. Any such training shall be provided under the following guidance:

(a) It shall be limited to situations when the use of non-DoD personnel would be unfeasible or impractical from a cost or time perspective and would not otherwise compromise national security or military preparedness.

(b) It shall not involve DON personnel in a direct role in law enforcement operations, except as otherwise authorized by law.

(c) The performance of such assistance by DON personnel shall be at a location where there is not a reasonable likelihood of a law enforcement confrontation, except as otherwise authorized by law.

(8) Use of DON Personnel to Operate or Maintain Equipment. The use of DON personnel to operate or maintain or to assist in operating or maintaining equipment shall be limited to situations when the training of non-DoD personnel would be unfeasible or impractical from a cost or time perspective and would not otherwise compromise national security or military preparedness concerns. In general, the head of the civilian law enforcement agency may request DON activities to provide

personnel to operate or maintain or assist in operating or maintaining equipment for the civilian agency. This assistance shall be subject to the following guidance:

(a) It shall not involve DON personnel in a direct role in law enforcement operations, except as provided by this instruction or as otherwise authorized by law.

(b) It shall be at a location where there is not a reasonable likelihood of a law enforcement confrontation, except as otherwise authorized by law.

(c) The use of military aircraft to provide point-to-point transportation and training flights for civilian law enforcement officials may be provided only under reference (c).

(d) Additional provisions concerning drug, customs, immigration, and certain other laws: A request under this provision for DON personnel to operate or maintain or to assist in operating or maintaining equipment made available under this instruction may be made by the head of a civilian agency empowered to enforce the following laws:

1. The Controlled Substances Act (Title 21, U.S. Code, Sections 801 et seq.) or the Controlled Substances Import and Export Act (Title 21, U.S. Code, Sections 951 et seq.);

2. Immigration and Nationality Act (Title 8, U.S. Code, Sections 1324-1328);

3. Law relating to the arrival or departure of merchandise, as defined in the Tariff Act of 1930 (Title 19, U.S. Code, Section 1401), into or out of the customs territory of the United States, as defined in the Tariff Schedules of the United States (Title 19, U.S. Code, Section 1202), or any other territory or possession of the United States;

4. Any other law that establishes authority for DON personnel to provide direct assistance to civilian law enforcement officials.

(e) DON personnel may be assigned to operate or assist in operating equipment to the extent the equipment is used for monitoring and communicating to civilian law enforcement officials the movement of air and sea traffic with respect to any criminal violations specified in paragraph 8(c)(5) of this instruction. This includes communicating

information concerning the relative position of civilian law enforcement officials and other air and sea traffic.

(f) In an emergency circumstance, equipment operated by or with the assistance of DON personnel may be used outside the land area of the United States (or any commonwealth, territory, or possession of the United States) as a base of operations by Federal law enforcement officials to facilitate the enforcement of such laws, and to transport such officials in connection with such operations, subject to the following limitations:

1. Equipment operated by or with the assistance of DON personnel may not be used to interdict or interrupt the passage of vessels or aircraft, except when DON personnel are otherwise authorized to take such action with respect to a civilian law enforcement operation.

2. There must be a joint determination by the Secretary of Defense and the Attorney General that an emergency circumstance exists under Title 10, U.S. Code, Section 374(c) (2). An emergency circumstance may be determined to exist under this subparagraph only when the size and scope of the suspected criminal activity poses a serious threat to the interests of the United States, and enforcement of laws in paragraph 8(c)(5) of this instruction would be impaired seriously if the assistance described in this subparagraph were not provided.

3. The emergency authority in this subparagraph applies only to large-scale criminal activity at a particular point in time or over a fixed period. It does not permit use of this authority on a routine or extended basis.

(9) Nothing in these subparagraphs restricts the authority of military personnel to take immediate action to save lives or property or to protect a Federal function as provided in this paragraph.

(10) When DON personnel are otherwise assigned to provide assistance, the participation of such personnel shall be consistent with the limitations in such laws, if any, and such restrictions as may be established by the chain of command.

d. Other Permissible Indirect Assistance:

(1) Transfer of information acquired in the normal course of military operations. See paragraph 5 above.

(2) Such other actions approved by the Secretary of the Navy that do not subject civilians to use of military power that is regulatory, proscriptive, or compulsory.

e. Exceptions based on status. The restrictions in this paragraph do not apply to the following persons:

(1) A member of a Reserve Component when not on active duty, active duty for training, or inactive duty for training.

(2) A member of the National Guard when not in the Federal Service.

(3) A civilian employee of the Department of Defense. If the civilian employee is under the direct command and control of a military officer, assistance will not be provided unless otherwise permissible under paragraph 8.

(4) A member of a DON when off duty and in a private capacity. A member is not acting in a private capacity when assistance to law enforcement officials is rendered under the direction or control of DoD authorities.

9. Reimbursement and Accounting Procedures

a. As a general rule, reimbursement is required when equipment or services are provided to agencies outside DoD. When DON resources are used in support of civilian law enforcement efforts, the costs to DON shall be limited to the incremental or marginal costs.

b. As a part of the normal administrative control procedures, a copy of the civilian law enforcement agency request or a statement of the requested support and the official approval should be retained for two years by the command providing the assistance. The date(s) and location(s) of the support and the DON resources employed shall be included in the documentation.

c. The system used to account for the cost of support to civilian law enforcement agencies need be no different from that deemed adequate and sufficient for normal administration and control of resources. If the accounting system used by a command has the capability to accumulate and distribute the indirect costs incurred in providing the support, including the indirect costs for the overall management of the command, that system shall be used. Where such a system is not in use, but

the existing accounting system can be easily modified to provide for a systematic and rational indirect costing process which would also be beneficial to the day-to-day operations of the command, such modification shall be effected. Where such a system is not in use and the command has no other recurring or substantial need for an accounting system which separately identifies direct and indirect costs, the command will use a memorandum costing or cost-finding system established by the Assistant Secretary of the Navy (Financial Management and Comptroller).

d. Requests for waivers of reimbursement shall be forwarded to the Chief of Naval Operations (N3/N5) or the Commandant of the Marine Corps (Code PS), as appropriate with a copy to Assistant Secretary of the Navy (Financial Management and Comptroller). Budgetary resources of the requesting civilian law enforcement agency and past practices with respect to similar types of assistance will be considered in evaluating such requests. The Under Secretary of Defense for Personnel and Readiness is the approval authority to waive reimbursement. Waivers of reimbursement will normally be appropriate in the following circumstances:

(1) When assistance under this instruction involves use of DON personnel in an activity that provides training or operational benefits that are substantially equivalent to the benefit of normal training or operations.

(2) When reimbursement is not otherwise required by law, and assistance is provided as an incidental aspect of the activity that is conducted for military purposes.

10. Responsibilities

a. The Chief of Naval Operations (N3/N5) and the Commandant of the Marine Corps (Code PS) shall:

(1) Respond to the Joint Staff in the formulation of data to evaluate the impact of requests for assistance on national security and military preparedness.

(2) Advise the ASN(M&RA) on the impact on national security and military preparedness of specific requests for assistance when the Assistant Secretary of the Navy or higher authority acts as the approving authority.

(3) Review training and operational programs to determine how assistance can be provided to civilian law

enforcement officials, consistent with the policy in this instruction, with a view towards identification of programs that would not involve any incremental costs or that would permit waiver of reimbursement.

b. Naval Component and Fleet Commanders; Commanders and Commanding Officers of major Navy shore commands; Commanding Generals of Marine Corps operating forces; Commanders of Marine Corps bases, camps, aviation installations, logistics installations, and unit training centers; Commanding Generals of Marine Corps Reserve support activities shall:

(1) Review training and operational programs to determine how assistance can be provided to civilian law enforcement officials, consistent with the policy in this instruction, with a view towards identification of programs that would not involve any incremental costs or that would permit waiver of reimbursement.

(2) Establish operational procedures for rendering assistance to civilian law enforcement officials to include as applicable:

(a) Establishment of ocean surveillance and reporting programs.

(b) Provision of towing or escort services for vessels seized by the U. S. Coast Guard.

(c) Provision of transportation for arrested persons in custody of civilian law enforcement officials.

(d) Provision of logistic support for law enforcement operational units.

(e) Embarkation of civilian law enforcement officials on selected Navy vessels and aircraft for law enforcement purposes.

(f) Use of force in civilian law enforcement activities in accordance with reference (i).

(3) Establish contact points in subordinate commands for purposes of coordination with civilian law enforcement officials.

c. Naval Criminal Investigative Service field offices shall normally serve as the primary point of contact between Navy and Marine Corps commands and Federal, State and local civilian law enforcement officials in connection with investigative requests for assistance under this instruction.

11. Release of Information. Information provided for public affairs purposes that concerns law enforcement operations is the primary responsibility of the civilian agency that is performing the law enforcement function. DON activities may provide information on DON support when approved by the Chief of Information.



Dionel M. Aviles
Under Secretary of the Navy

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